Supreme Court, U.S.
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No. 01-1386

In The

Supreme Court of the United States

ROBERT T. HANSEN and MARLA DES ERMIA,

Petitioners,

v.

AEROSPACE DEFENSE RELATED INDUSTRY DISTRICT LODGE 725 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,

Respondent.

On Petition For A Writ Of Certiorari To The Superior Court Of California County Of Los Angeles

REPLY TO BRIEF IN OPPOSITION

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THE QUESTION PRESENTED IN THE PETITION IS FACTUALLY CORRECT

Respondent's Brief in Opposition to the Petition for Writ of Certiorari contends that the question presented by the Petition is not whether a cause of action for wrongful termination in violation of public policy by an elected union official who is discharged for exposing union corruption to the membership is preempted by the federal statutes governing union democracy. Respondent contends that the facts of the case do not raise this issue. In support of this contention Respondent cites excerpts from the Court of Appeals' decision to justify its position. In doing so Respondent ignores the specific fact-finding role of the jury in this case.

The jury in this case was given specific interrogatories and made unanimous findings of fact. The jury specifically found that Hansen responsibly reported the theft of union funds to the membership; that his employer was aware of this report; and that Hansen's discharge was made in retaliation for the report he made concerning the theft of union funds. (See questions numbers 2, 3, and 4 of the special verdict form at Appendix 19 and 20).

There was also no factual dispute at the trial that Hansen was elected as a business representative by the union membership for a four year term and his employment was terminated well before the passage of four years. The union's argument was that the creation of a new entity by reason of a merger of districts within the union permitted the union to treat Hansen as an at-will employee after the creation of the new entity but prior to the expiration of Hansen's four year elected term. This

raises a sub-issue as to whether the union hierarchy has the right to nullify the will of the membership's democratic choice of its leaders by simply changing the various organizational units within the union.

In any event the question raised by this Petition is clear. Do the federal statutes governing the rules of union democracy permit the discharge of a union employee because he refuses to remain silent and speaks out about corruption within the union hierarchy? The holding of the Court of Appeal in this case provides an incongruous answer, that is, that such statutes allow the union hierarchy to retaliate against honest union employees who refuse to remain silent and help cover up corruption within the union. It is hard to see how this furthers the principle of democracy within labor unions.

The Respondent's Brief in Opposition also asserts that Des Ermia's Petition raises largely factual issues. This is not correct. As was the case with Hansen, the jury through its special verdict unanimously found that Des Ermia was discharged for responsibly reporting the theft of union funds and that her employer's assertion that she was laid off for lack of work was false. (See the special verdict form as to Des Ermia, questions numbers 2, 3 and 4 at Appendix 15 and 16) There is no finding that the collective bargaining agreement was breached. No such question was ever presented to the jury. Nor did the trial court present any instructions whatsoever to the jury concerning a breach of an employment agreement. The facts and the issues that were presented to the jury revolved around what motivated Des Ermia's dismissal.

The jury was not required to interpret the collective bargaining agreement in order to resolve the issues in this case.

The issue raised by Des Ermia's claim implicates the policy underlying the federal labor statutes that seek uniformity in the interpretation of collective bargaining agreements. Her claim also implicates the statutory scheme designed to promote union democracy and to combat corruption within labor unions. A rule which deters union employees from exposing corruption within a labor union hinders and does not promote union democracy. The Court of Appeal in this case held that no matter what policy is implicated and no matter how important that policy is once an employer asserts a defense based on the collective bargaining agreement, even though that defense is false, all other considerations must fail.

This policy has sometimes found favor in the Circuit Courts of Appeal as well. A prime example of this is illustrated in *Sprewell v. National Basketball Association*, 231 F.3d 520 (9th Cir. 2000). In this case the Court originally held that a claim of racial discrimination and other wrongful conduct must fail and is preempted once an employer asserts a defense based on its view of the collective bargaining agreement. Later the Court withdrew its opinion and recognized that merely raising the claim by an employer that there is a need to interpret or refer to a collective bargaining agreement will not automatically cause the Court to hold a state law cause of action is preempted without a careful analysis of the policies underlying that state cause of action. See *Sprewell*

v. National Basketball Association, 266 F.3d 979 (9th Cir. 2001).

The Ninth Circuit also recently struggled with this same issue in *Cramer v. Consolidated Freightways, Inc.,* 255 F.3d 683 (9th Cir. 2001). In this case the Court, *en banc,* upheld a cause of action under state law for invasion of privacy was not preempted by reason of the employers' assertion of a defense based on its interpretation of the collective bargaining agreement. The employer in this case had installed video cameras in restrooms used by employees for the ostensible purpose of combating drug usage. Although the Court made a detailed analysis of how one could resolve this case without actually interpreting the collective bargaining agreement it is clear that the Court was attempting to reach a balance between the public policy inherent in the right to privacy and the need for uniformity in the interpretation of collective bargaining agreements.

In the case of Des Ermia, to the extent there is a claim that the policy of uniformity in interpretation of collective bargaining agreements is implicated, there is also a policy of promoting democracy and freedom from corruption in labor unions that is also implicated. The Court should grant the Petition here in order to resolve the question of balancing between potentially competing public policies as they relate to the need for uniformity in the interpretation of collective bargaining agreements.

Respectfully submitted,

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